

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**In re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation**

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88

This document pertains to:

***City of New York v. Amerada Hess Corp. et al.,*
Case No. NY-04-CV-03417**

**DECLARATION OF JENNIFER KALNINS TEMPLE IN SUPPORT OF DEFENDANTS'
JOINT MOTION *IN LIMINE* TO PRECLUDE PLAINTIFF FROM OFFERING
EVIDENCE OR ARGUMENT CONCERNING ANY POLICY OR REQUIREMENT TO
TREAT MTBE CONTAMINATION TO ANY LEVEL OTHER THAN THE NEW YORK
STATE MAXIMUM CONTAMINANT LEVEL**

JENNIFER KALNINS TEMPLE, an attorney duly licensed to practice law in the State of New York and in the United States District Court for the Southern District of New York, hereby declares the following under penalties of perjury:

1. I am a member of the law firm McDermott Will & Emery LLP, counsel for defendant Exxon Mobil Corporation in the above-captioned case. I respectfully submit this Declaration in further support of *Defendants' Joint Motion in Limine to Preclude Plaintiff from Offering Evidence or Argument Concerning Any Policy or Requirement to Treat MTBE Contamination to Any Level Other Than The New York State Maximum Contaminant Level* (hereinafter "Defendants' Joint Motion") that is being filed concurrently herewith in the above-captioned case. This Declaration authenticates the exhibit attached and referenced in Defendants' Joint Motion. In accordance with this Court's Individual Rules and Procedures, only the relevant pages of each exhibit are attached.

2. Attached at Exhibit A are true and correct copies of relevant pages from the deposition of Arthur Ashendorff (Oct. 19, 2005). The attached copies were made on or about May 11, 2009.

3. Attached at Exhibit B are true and correct copies of relevant pages from *Minutes of Groundwater Project Team Meeting* (May 27, 2008). The attached copies were made on or about May 11, 2009.

4. Attached at Exhibit C are true and correct copies of relevant pages from the deposition of Steven Schindler (Apr. 23, 2009). The attached copies were made on or about May 11, 2009.

Dated: May 11, 2009


JENNIFER KALNINS TEMPLE

EXHIBIT A

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VOLUME II

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
Ether ("MTBE") :
Products Liability :
Litigation :

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October 19, 2005

CONFIDENTIAL Continued

Videotaped Deposition of ARTHUR J.
ASHENDORFF, held in the law offices of
McDermott, Will & Emery, 50 Rockefeller
Plaza, New York, New York 10020,
beginning at approximately 10:10 a.m.,
before Ann V. Kaufmann, a Registered
Professional Reporter, Certified
Realtime Reporter, Approved Reporter of
the U.S. District Court, and a Notary
Public of the Commonwealth of
Pennsylvania.

ESQUIRE DEPOSITION SERVICES
1600 John F. Kennedy Boulevard
Four Penn Center, Suite 1210
Philadelphia, Pennsylvania 19103
(215) 988-9191

ESQUIRE DEPOSITION SERVICES

1 are a water supplier.

2 The way we believe it works
3 is that regulations are proposed and
4 analyzed and made based -- by health
5 officials, EPA, State Health Department,
6 and they set standards that they believe
7 are appropriate to protect public
8 health. And it is our job to make sure
9 that the drinking water meets that
10 standard.

11 I'm not sure that -- I mean
12 the assumption is that if we can provide
13 water that meets all of the standards,
14 we will be providing water that is not
15 unhealthy.

16 I don't think you think in
17 terms of any samples being healthy or
18 any particular parameter being healthy
19 or unhealthy. We assume that the people
20 who make the regulations are basically
21 providing the standards that will
22 protect public health, and we carry that
23 out.

24 Q. And with respect to the

EXHIBIT B

From: Mak, Florence
Sent: Monday, June 30, 2008 8:42 AM
To: 'Liberi, Tracey'
Subject: RE: WQ meeting 5_27_08_final draft.doc

Attachments: WQ Meeting 052708 revised.doc



WQ Meeting
52708 revised.doc

Good morning, Tracey.

As attached, please find the revised minutes. There were minor modifications in the names used.

Thank you,

Florence W. Mak, P.E., Project Manager

Division of Dependability and Risk Assessment, BEDC

New York City Department of Environmental Protection

96-05 Horace Harding Expressway, 4th Floor

Corona, New York 11368-5107

Tel. (718) 595-5481, Fax (718) 595-6966/7274

fmak@dep.nyc.gov

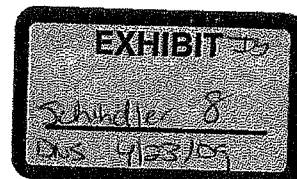
From: Liberi, Tracey [mailto:LiberiTG@cdm.com]

Sent: Friday, June 20, 2008 12:51 PM

To: Mak, Florence; Barnès, Venetia; Meakin, William; Schindler, Steven; Freud, Salome; Becker, William; Cisterna, Richard H.; Feldman, Eileen; Luck, Anni; O'Rourke, Daniel

Cc: Kroll, Gary; Peters, Richard E.

Subject: WQ meeting 5_27_08_final draft.doc



<<WQ meeting 5_27_08_final draft.doc>>

All:

Please see the draft meeting minutes from our Dependability groundwater project team meeting of May 27, 2008.

CDM / HAZEN AND SAWYER

A Joint Venture

DEP-FP1
Water Supply
Dependability Strategy

1375 Broadway, Suite 1401 • New York, NY 10018
212 221-8482 • Fax: 212 221-9540

**THE CITY OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF ENGINEERING DESIGN AND CONSTRUCTION**

ENGINEERING SERVICES FOR DEP CONTRACT DEP-FP1

Minutes of Groundwater Project Team Meeting – May 27, 2008

Approach to Developing Raw and Finished Water Quality Design Criteria

Location: LeFrak – 11th Floor Conference Room

Attendees:

NYCDEP:

Venetia Barnes, Florence Mak, William Meakin, Steve Schindler,
Salome Freud

JV:

Bill Becker, Rick Cisterna, Eileen Feldman, Tracey Liberi,
Anni Luck, Dan O'Rourke

1. Background of City Groundwater Project

Deleted: Jamaica

a. Project Goals

- 1) The goal of the City Groundwater Facility Planning is to bring the project to 10% design. This includes siting water treatment plants and wells; designing treatment facilities, raw and finished water transmission; and developing construction and O&M costs.
- 2) The project will provide 55 mgd of potable water using existing and new Magothy wells. At the completion of the 55 mgd Dependability portion of groundwater, 80 mgd of Queens groundwater will be available (55 mgd – Dependability, 10 mgd – Station 6, 15 mgd – existing capacity).
 - i) The team will use modeling and sample results to site wells with lowest risk of contamination.
 - ii) The water quality of the NYCDEP's 15 mgd of "existing capacity" (wells with GAC treatment and Well 5) will be evaluated to see if they meet the finished water goals of the project.
 - iii) Water table management is also under consideration as a portion of the Dependability groundwater project.

b. Project Name

- 1) The "Jamaica Groundwater Project" name originated during the early stages of the Dependability Project.
- 2) S. Freud indicated that the official name of the groundwater system is

Page 1 of 6

Error! Bookmark not defined.

DEP-FF1

Approach to Developing Raw and Finished Water Quality Design Criteria

May 27, 2008

for discussion of water quality goals and targets.

4) The following goals were discussed:

- i) Hardness: Target 80-100 mg/L, or the standard "mid-range" of hardness. S. Schindler recommended looking at historic Croton hardness and aiming for this level.
- ii) Color: Iron and manganese are the potential culprits for color problems. Treatment for iron and manganese must be selected carefully. Sequestering is not expected to work because of blending issues with Catskill/Delaware water. Sequestered contaminants can become "unmasked" when blended with non-sequestered water. A design goal of less than 15 scu and a design target of less than 5 scu were discussed.
- iii) Total Dissolved Solids: A goal of TDS below 400 mg/L is appropriate. The JV team will conduct an anion/cation balance to establish the current dissolved solids level.
- iv) Toxic Carcinogens: No matter what level of treatment provided, no process will remove 100% of a contaminant. BWS does not want to knowingly distribute water with known levels of a carcinogen, even if it is below the regulatory limit. A preliminary decision of treating toxic parameters to 10% of the MCL, 90% of the time was established. Historically, the NYCDEP shut down wells that did not have treatment when the raw water quality exceeded 50% of the MCL for any parameter.
- v) pH: Some treatment methods (e.g., air stripping) can adjust the pH out of the optimal range. The required pH is set by New York State, the Lead and Copper Rule, and the NYCDEP corrosion control program.

5) The finished water criteria will be selected based on treatment costs, available treatment plant sites, and the impact to the sewer system (residuals).

3. Action Items

- a. BWS – Provide additional groundwater raw water quality data for 2006-2007.
- b. JV Team – Retain all CCLs on the Master Parameter List – Determine what laboratories include in the EDC/PCPP scan, then place remaining EDC/PCPPs of concern on the Master Parameter List – Additional. The sampling plan will target 8 to 10 wells in key locations for the additional parameters and the EDC/PCPP scan.
- c. JV Team – Determine if USGS has ever detected EDCs/PCPPs in Queens groundwater.
- d. JV Team – Investigate EDC/PCPP analytical methods and their costs.
- e. S. Freud – Provide a list of approved analytical methods per analyte.
- f. JV Team – Determine historic hardness levels and incorporate into finished water

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW JERSEY

IN RE:

Methyl Tertiary Butyl : MDL NO. 1358 (SAS)
Ether ("MTBE") :
Products Liability :
Litigation :

In Re:

City of New York

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April 23, 2009

Videotaped Transcript of the
deposition of STEVEN SCHINDLER, called for
Oral Examination in the above-captioned
matter, said deposition taken pursuant to
Federal Court Rules, by and before DANA N.
SREBRENICK, a Federally-Approved Certified
Realtime and Certified Livenote Reporter, and
Notary Public for the State of New York, at
the offices of McDermott, Will & Emery, LLP,
340 Madison Avenue, New York, New York,
commencing at 10:00 a.m.

GOLKOW TECHNOLOGIES, INC.
877.370.3377 ph|917.591.5672 fax
deps@golkow.com

JOB NO. 14751

1 A. Yes.

2 Q. We discussed earlier that you
3 agree with that statement, correct?

4 A. Yes.

5 Q. Do you know who wrote that
6 statement?

7 A. No.

8 Q. It goes on to say "BWS" -- is
9 that Bureau of Water Supply?

10 A. Yes.

11 Q. -- "does not want to knowingly
12 distribute water with known levels of a
13 carcinogen even if it's below the regulatory
14 limit." And then it says, "A preliminary
15 decision of treating toxic parameters to 10
16 percent of the MCL, 90 percent of the time
17 was established."

18 Do you see that?

19 A. Yes.

20 Q. What does it mean to treat a
21 carcinogen to 10 percent of the MCL 90
22 percent of the time?

23 A. Well, it would mean to provide
24 adequate treatment to ensure they do not

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1 exceed 10 percent of the MCL in 90 percent of
2 the samples that are collected.

3 Q. And do you know how the City
4 would go about ensuring that level of
5 treatment?

6 A. Well, it would be through a --
7 an engineering design analysis. I'm not --
8 as I said earlier, I'm not an expert on -- on
9 treatment, but there would be treatment
10 processes that would be able to achieve these
11 levels.

12 Q. And when it says, "A
13 preliminary decision has been made," do you
14 know if this decision has changed from being
15 a preliminary to a final decision?

16 A. I don't know.

17 Q. Do you know who would make this
18 decision?

19 A. I would think the commissioner
20 would be making this decision.

21 Q. And who is the commissioner?

22 A. The current acting commissioner
23 is Steven Lawitts.

24 Q. Steven Lawitts?